SUPREME COURT, U. S.

JUN 24 1969

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1278

CHARLES R. ARMSTRONG,

Petitioner,

v.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF CLAIMS

PETITION BY CHARLES R. ARMSTRONG FOR REHEARING OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Charles R. Armstrong
12 Underwood Place, N.E.
Washington, D.C. 20012
Petitioner

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Petitioner respectfully requests that this Court grant a rehearing of its order dated June 2, 1969, which denied certiorari, and that the Court now grant certiorari, Rule 58(2) of this Court.

That petition for certiorari previously filed herein presented the question—whether or not the Veterans Administration (VA) complied with its own procedural regulations in removing petitioner from his employment within the federal establishment. The question or issue for rehearing is confined to this: whether or not petitioner was

entitled to a "Satisfactory Rating" in the year 1963 under any procedural regulations of the Civil Service Commission or the Veterans Administration? Petitioner is not contending that he cannot be discharged from his employment with or without a "Satisfactory Rating"; but, is asserting that the agency and the court below erred in assigning and making the following, at pages 4 & 5 of the Appendix; and slip opinion:

> * * * This warning was procedurally defective and thus had to be withdrawn. It is not withdrawn for any other reason. * * * the satisfactory rating was assigned him only because *technically he could be given no other.* (emphasis added)

Technically, petitioner could not have been assigned any kind of rating in the year 1963, as indicated by the admissions on file, in certified record filed herein.

Petition filed herein, February 12, 1968 (See certified record):

> "10. That employees of GS-10 and below must be rated at least annually, and employees of GS-11 and above must be rated at least eighteen months, Federal Personnel Manual, subchapter 2, Chapter 430, Performance Evaluation, page 430-6, paragraph 2-4(d)."

Petitioner's Affidavit herein, filed April 8, 1968 (See certified record):

> "4. On or about February 5, 1961, I was promoted to Architectural Engineer (Specification) Position No. 21295. R-1 GS808-11. * * * "

STATEMENT

Petitioner was promoted from a GS-9 to GS-11 on or about February 5, 1961 which meant or indicated that petitioner's official established rating dates were—February 5 or 6, 1961; August 5 or 6, 1962; and February 5 or 6, 1964, at least once every eighteen months. No rating or ratings were to be assigned petitioner in the year 1963 under any circumstances, whether or not they were pro-

cedurally defective or otherwise. A *warning* and *rating* are not identical. They are separate and distinct proceedings. A *warning* can be given or made at anytime; but, a *rating* must be given or issued on the *official established rating date*, only, which is at least every eighteen months. Under the prevailing regulations, the Civil Service Commission and the Agency (VA) were powerless to make or assign any kind of rating; and specifically, it was a gross procedural error to assign petitioner a "Satisfactory Rating", for the reason that the prevailing regulations prohibited such an assignment, which reads—"If and when the matter is thus favorably resolved, the employee will be informed that his rating is satisfactory." Ergo, technically speaking, petitioner should prevail.

CONCLUSION

For the reasons set forth in this petition for rehearing, as well as in the petition for certiorari previously filed, certiorari should be granted.

Respectfully submitted,

CHARLES R. ARMSTRONG
12 Underwood Place, N.E.
Washington, D.C. 20012

Petitioner

CERTIFICATE OF GOOD FAITH

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.

CHARLES R. ARMSTRONG